

LAW OFFICES
LEYDIG, VOIT & MAYER, LTD.
TWO PRUDENTIAL PLAZA, SUITE 4900
180 NORTH STETSON AVENUE
CHICAGO, ILLINOIS 60601-6780

RECEIVED
CENTRAL FAX CENTER

FEB 17 2005

TELEPHONE: (312) 616-5600

FACSIMILE: (312) 616-5700 (G3)
(312) 849-0495 (G4)

FACSIMILE COVER SHEET

DATE: FEBRUARY 17, 2005

NUMBER OF PAGES (INCLUDING
THIS TRANSMITTAL COVER SHEET): 7

TIME:

OUR REFERENCE: 207324

FROM: CHRISTOPHER T. GRIFFITH
REGISTRATION NO. 33,392

TO: EXAMINER SHAWNA JEANNINE SHAW
GROUP 3737
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C.

TELEPHONE NUMBER:

FACSIMILE NUMBER: 703-872-9306

IN RE APPLN OF: ALAM ET AL.
APPLICATION NO. 10/034,432
FILED: DECEMBER 27, 2001
FOR: INDOCYANINE GREEN (ICG) COMPOSITIONS AND RELATED
METHODS OF USE
GROUP ART UNIT: 3737
EXAMINER: SHAWNA JEANNINE SHAW

A TERMINAL DISCLAIMER IN THE REFERENCED APPLICATION FOLLOWS.

A confirmation copy of the transmitted document will:

☒ Not be sent. This will be the only form of delivery of the transmitted document.

The information contained in this facsimile transmission is intended only for the use of the individual or entity named above and those properly entitled to access to the information and may contain information that is privileged, confidential, and/or exempt from disclosure under applicable law. If the reader of this transmission is not the intended or an authorized recipient, you are hereby notified that any unauthorized distribution, dissemination, or duplication of this transmission is prohibited. If you have received this transmission in error, please immediately notify us by telephone or facsimile. Thank you.

BEST AVAILABLE COPY**PATENT**
Attorney Docket No. 207324**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE****RECEIVED**
CENTRAL FAX CENTER

In re Application of:

ALAM et al.

Art Unit: 3737

FEB 17 2005

Application No. 10/034,432

Examiner: Shawna Jeannine Shaw

Filed: December 27, 2001

For: **INDOCYANINE GREEN (ICG)**
COMPOSITIONS AND RELATED
METHODS OF USE**TERMINAL DISCLAIMER UNDER 37 CFR 1.321**

Assignee, Akorn, Inc., is the owner of 100 percent interest in the above-identified application (hereinafter "the present application").

Pursuant to 37 CFR 3.73(b), the assignment of the present application from the inventors, or chain of title from the inventors, to the Assignee was recorded in the Patent and Trademark Office at Reel 012752, Frame 0848, on March 25, 2002.

Also, pursuant to 37 CFR 3.73(b), the undersigned has reviewed all the evidentiary documents accompanying or referred to in this Terminal Disclaimer and, to the best of the undersigned's knowledge and belief, certifies that title is in the Assignee.

Assignee, through its attorneys and agents, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the present application that would extend beyond the expiration date of the full statutory term defined in 35 USC 154 to 156 and 173 of any U.S. patent granted on pending Application No. 10/365,028, filed on February 12, 2003, (hereinafter "the second patent"), as shortened by any terminal disclaimer filed prior to the grant of the second patent. Assignee, through its attorneys and agents, further agrees that any patent granted on the present application shall be enforceable only for and during such period that its legal title is the same as the legal title to the second patent, this agreement to run with any patent granted on the present application and to be binding upon the grantee, its successors, and assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the present application that would extend to the expiration date of the full statutory term of the second patent as defined in 35 USC 154 to 156 and 173 in the event the second patent terminates prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer filed prior to the grant of the patent. Examples of such

BEST AVAILABLE COPY

In re Appln. of ALAM et al.
Application No. 10/034,432

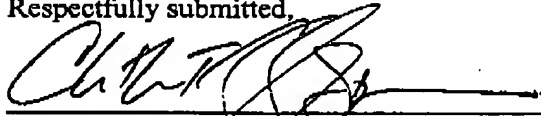
non-applicable termination of the patent granted on the second patent are as follows: (1) second patent expires for failure to pay a maintenance fee, (2) second patent is held unenforceable, (3) second patent is found invalid by a court of competent jurisdiction, (4) second patent is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, (5) second patent has all claims canceled by a reexamination certificate or reissuance, and (6) second patent is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In making this disclaimer, Assignee reserves the right to extend the term of any patent granted on the present application for a period of delay, in the event the delay is defined by statute and/or regulation as allowing, or providing for, an extension of term. This right is reserved in the event the second patent terminates, or does not terminate, prior to the expiration of its full statutory term. Examples of such a delay include regulatory delay, and delay due to appellate review.

The undersigned is empowered to act on behalf of the Assignee.

The Commissioner is hereby authorized to charge to Deposit Account 12-1216 the fee of \$130.00 set forth in 37 CFR 1.20(d). A duplicate copy of this document is enclosed herewith for that purpose.

Respectfully submitted,



Christopher T. Griffith, Registration No. 33,392
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, Illinois 60601-6780
(312) 616-5600 (telephone)
(312) 616-5700 (facsimile)

Date: February 17, 2005

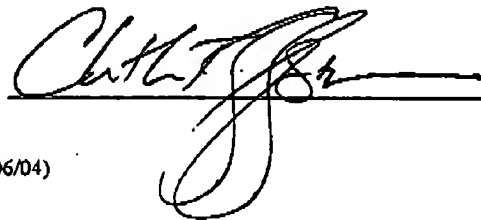
In re Appln. of ALAM et al.
Application No. 10/034,432

BEST AVAILABLE COPY

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this TERMINAL DISCLAIMER (along with any documents referred to as attached or enclosed) is being facsimile transmitted to the U.S. Patent and Trademark Office, Attention: Examiner Shawna Shaw, Art Unit 3737, Facsimile Number 703-872-9306.

Date: FEBRUARY 17, 2005



Terminal Disclaimer Copending Application (Revised 12/06/04)